IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.2082/07

Bal Kishan @ Balla **Versus** State

DATE OF ORDER :: 29/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. R.K. Mathur, for petitioner
Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed assailing order dated 13th November, 2007 whereby learned trial Judge while invoking his powers u/s.311 of the Code considered appropriate to summon Kum. Mamta and Dy.S.P. Shri Om Prakash Jangid.

Petitioner is facing trial for offence u/s.306 IPC and statements of prosecution witnesses were recorded. Thereafter, the statement of accused was recorded u/s.313 Cr.P.C. The matter has riped up for hearing and final arguments were made and judgment was reserved. Learned trial Judge at this stage considered appropriate to get the statements of Kum. Mamta [real sister of deceased] and Dy.S.P. Shri Om Prakash Jangid [I.O.] recorded as prosecution witnesses, hence, invoked his powers u/s.311 of the Code and summoned the witnesses.

On a specific question put to counsel as to what is the relation of Kum. Mamta with deceased. It has been informed that she is real sister of deceased and Om Prakash Jangid, Dy.S.P. is the Investigating Officer.

Counsel for petitioner contends that once the matter has been finally concluded, arguments were made, order was reserved and at this stage summoning the witnesses by learned trial Judge while invoking his powers u/s.311 of the Code, is abuse of the process of law, which requires interference by this court.

So far as Section 311 of the Code is concerned, the court at any stage of inquiry or trial or other proceedings can summon any person as a witness or re-examine or record statement of party whose evidence if considered to be essential for just decision of the case and it gives discretion to the Presiding Officer to consider at any stage wherever it is required.

The object of Section 311 of the Code has been considered by the apex court in recent judgment in **Iddar & Ors. Vs. Aabida & Anr. [2007 AIR SC-5490]** - relevant para whereof is reproduced as under:

> “The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper

> exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind”.

So far as present petitioner is concerned, he is facing trial for offence u/s.306 IPC and witnesses who have been summoned by learned trial Judge under order impugned dated 13th November, 2007 and from the record, it appears that both the two prosecution witnesses were named in the list of prosecution witnesses, but for some good reason, their statements have not been recorded by the prosecution. But, looking to her status and relationship with deceased, certainly it has direct nexus and this court does not find any error committed by learned trial Judge for summoning the above named witnesses.

Consequently, this court does not find any substance in the misc. petition, the same stands dismissed. What has been observed by this court above will not come in the way before learned trial Judge in adjudication of the matter.

[AJAY RASTOGI],J.

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